

MINUTES
BAR HARBOR PLANNING BOARD
DECEMBER 2, 2009
Council Chambers – Municipal Building
93 Cottage Street

I. CALL TO ORDER — 6:00 p.m.

Members Present: Lynn Williams, Vice Chair; Buck Jardine, Secretary; Kay Stevens-Rosa, Member. Also present: Anne Krieg, Planning Director; Brian Madigan, Staff Planner; Lee Bragg, Town Attorney.

II. ADOPTION OF THE AGENDA

Ms. Stevens-Rosa moved to adopt the agenda. Mr. Jardine seconded the motion and the Board voted unanimously to approve the motion.

III. APPROVAL OF MINUTES

November 18, 2009 Minutes

Mr. Jardine moved to approve the minutes from the November 18, 2009 meeting. Ms. Stevens-Rosa seconded the motion and the Board voted unanimously to approve the motion.

IV. REGULAR BUSINESS

A. Continuation of Public Hearing – SP-09-02 – West Street Hotel

Project Location: West Street, Bar Harbor Tax Map 104, Lots 113-118, 122, 123, 143, 144, 146, 147, 149

Applicant: North South Construction Inc.

Application: Hotel and Accessory Uses

Mr. Hamilton, the applicant's attorney, described the dwelling unit lease agreement and deed covenants. Mr. Bragg commented that the documents submitted do not yet meet all the applicable requirements of Section 125-69(R).

Ms. Krieg then reviewed the outstanding issues that need resolution prior to a decision, or will be required as conditions of approval.

Mr. Hamilton reviewed the applicant's position regarding the Town's assertion that the project review now requires subdivision review. Mr. Hamilton stated that he would object to the subdivision review process if it would add additional time to the lengthy review process the project has already been subjected to. Mr. Bragg clarified that the additional findings required for subdivision review would not in itself add to the applicants review time.

Ms. Stevens-Rosa provided an overview of her interpretation of the applicant's height argument. She stated that she spent time reviewing facts with respect to height and habitable space. While she did not believe the Board had any qualms with the applicant's

interpretation of mean original grade, she stated that she personally has several issues with the applicant's logic with respect to the height of the building. Ms. Stevens-Rosa questioned why the applicant had changed the name of the bottom level of the hotel from first floor to basement. Mr. Salvatore responded that in reading the definition of basement, he believed the bottom floor should in fact be termed as a basement instead of a first floor. Mr. Jardine added that the building is clearly five stories, and that he would not support the applicant's assertion that the building is four stories plus a basement instead of five stories as the architectural plans indicate.

Ms. Stevens-Rosa and Mr. Hamilton debated the definition of habitable space at length. Mr. Hamilton stated that he objected to the fact that Ms. Stevens-Rosa had done research outside the Bar Harbor Land Use Ordinance and International Building Code. Ms. Stevens-Rosa reviewed the definition of "inhabit" and "habitable" as defined in the dictionary. She stated that she referred to the dictionary definition because she felt the IBC definition is silent on what a gym area might be defined as. She added that she had spoken verbally to the State Fire Marshall to gain his opinion on about the fifth level of the building and whether he might count a gym area as habitable space. She stated that the Fire Marshall indicated that he would consider gym space as habitable because people will ultimately occupy the space.

Mr. Hamilton emphatically objected to Ms. Stevens-Rosa's logic as well as the fact that she had done what he termed as "research outside of the Bar Harbor Land Use Ordinance and IBC."

Due to the escalating tension associated with the discussion between Ms. Stevens-Rosa and Mr. Hamilton, Mr. Bragg reminded the Board that they could go into deliberations to discuss these issues without interruption from the applicant, and then reopen the public hearing at a later time.

Mr. Jardine and Ms. Williams stated that they supported Ms. Stevens-Rosa actions as well as her logic. Mr. Jardine added that Board members are empowered to interpret the Ordinance as well as the Comprehensive Plan and the relationship between the two.

Mr. Moore stated that when reading the ordinance as a whole the term "dwelling unit" affirms the IBC definition of habitable space as a place where cooking and sleeping must take place.

Mr. Bragg suggested the Board deliberate on the definition of habitable space. He noted that this definition is important because it informs the calculation of space dedicated to dwelling units. Mr. Bragg added that it is fair for the Board to refer to dictionary definitions and for them to investigate the intent of the language outside of the Bar Harbor Land Use Ordinance and IBC. He added that common sense interpretation is also adequate to support the Board's understanding of issues.

Ms. Krieg described the intent of the ordinance at the time it was drafted. She stated that the Board's intent at the time was to provide an incentive to developers so that residential units would be added to the core business district of Bar Harbor. She added that the ordinance did not anticipate a fourth floor would be below 35 feet, or that a fifth floor would even be possible.

Mr. Bragg commented on the applicant's floor area calculation of square footage devoted to dwelling space. He asked the Board to consider the following: If the Board concluded that the 5th floor is not habitable space, could the applicant still use the floor area of the 5th level as the basis for the square footage of dwelling space needed? Or, would they drop to the 4th level and this square footage as the basis for dwelling space area? Mr. Bragg raised the point that if the height of the fourth floor was below 35 feet, and the application sought approval for four levels that rose to a height of 43 feet, but the floor area of the fourth level was 32 or 33 feet high, the applicant's logic would lead to a nonsensical resolution. This is because there would be no floor area above 35' feet to measure the space that should be dedicated to dwelling units. Therefore, no dwelling space would be required as is illustrated in the ordinance.

Mr. Hamilton stated that he believes the Board has not provided reasonable or definitive feedback to the applicant throughout the review process. He stated that no matter the applicant's changes to the plan and their attempt to comply with the Board's requests, the Board continues to find reasons to deny the project.

Ms. Krieg stated that staff would prepare draft findings for the Board to review at their next meeting. She then reviewed the list of outstanding items the applicant needs to provide, or that will be included as conditions of a decision.

Ms. Krieg stated that the applicant needs to supply an approval from DEP with respect to wastewater. She reminded the applicant that he needs to also supply an access easement to show the abutting property owner accepts that cars will pass over his property. Furthermore, the loading zone and land swap issues should be resolved with the Leiser's as part of the decision. She stated that the Public Works Director has indicated he will not sign the Capacity Statement due to the Town's loss of right-of-way as defined by prescriptive easement on Lennox Place. She also asked the applicant to revise the traffic study to show that there will not be cars exiting Lennox Place in a build scenario. Ms. Krieg added that it is up to the Board to require the project obtain approval from the Fire Marshall.

Ms. Krieg requested a Planning Board meeting on December 16, 2009 to hear the West Street project and various zoning amendments.

Mr. Jardine moved to have special Planning Board meeting on December 16th for West Street ad proposed ordinance amendments. Ms. Stevens Rosa seconded the motion and the Board voted unanimously to approve the motion.

Mr. Bearor commented that common sense needs to prevail when reviewing this application. With respect to Exhibit 9.1.7 he commented that the applicant is counting parking spaces toward queuing and toward its parking requirement and is therefore "double dipping." He stated concern that parking spaces could not be used by guests if they were also used by the valet. He encouraged the Board to review his interpretation of habitable space. Mr. Bearor also stated that the dwelling lease terms should be for more than 90 days and long term residents.

Mr. Bearor requested that the traffic report supply the truck traffic turning movements.

Mr. Jardine moved to continue the project to their December 16th special meeting. Ms. Stevens-Rosa seconded the motion and the Board voted unanimously to approve the motion.

V. OTHER BUSINESS

Conservation Commission Work Plan Review

Ms. Weber, the chair of the Conservation Commission, gave an overview of the tasks the Commission planned to work on during this fiscal year. Ms. Weber stated that this year the Commission was focusing on solid waste reduction. She also stated that the commission would be working on the open space plan identified as midterm project in the Comp Plan. Mr. Jardine stated that he believes the minimum lot size should be increased in certain areas of town to preserve greenspace.

June 2010 Land Use Ordinance amendments

Ms. Krieg stated that she would review ordinance amendments at the December 16, 2009 meeting.

VI. PLANNING DIRECTOR'S REPORT

Request for Special Meeting December 16, 2009

A motion in favor of this meeting was made during the Board's discussion of the West Street Hotel.

VII. BOARD MEMBER COMMENTS AND SUGGESTIONS FOR THE NEXT AGENDA

There were none.

VIII. ADJOURNMENT

Mr. Jardine moved to adjourn the meeting and Ms. Stevens-Rosa seconded the motion. The Board voted unanimously to adjourn the meeting at 8:00pm.

Minutes prepared by Staff Planner Brian Madigan, and Secretary Clyde Jardine for Planning Board Review at their December 16, 2009 meeting

Signed as approved:

Clyde L. Jardine, Jr., Secretary
Planning Board, Town of Bar Harbor

Date